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FOREIGN OFFICE,
LONDON, S.W.1.
December 11, 1962

(A1082)

*17/12/62
Dear Mr. Shackleton,*

Thank you for your letter WIS 220/440/01 of November 20 and the very helpful record of the meeting held on November 13 about the British Guiana/Surinam frontier.

You will recall that at the meeting it was agreed that we might offer to the Dutch our comments on certain of the more technical clauses of the proposed treaty. Mr. Allott has kindly prepared a draft of these comments of which I am enclosing a copy. We would be very grateful if you and Commander White in the Admiralty to whom I am copying this letter and enclosure would let us have your comments. You will note that we are proposing to transmit our views under cover of an aide memoire of which I enclose a draft and on which we would also welcome your views and those of Commander White.

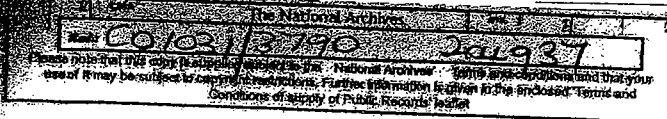
*Yours sincerely,
P.M. Hutchinson*

(P.M. Hutchinson)

I am copying this letter to Commander White.

J.W. Stacpoole, Esq.,
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Preliminary comments on points of substance on the
draft Treaty

1. Proportional Line.

This system of river-boundary delimitation is, apparently, unprecedented. Its principal advantages are: that it requires one comparatively simple calculation to be made so that, thereafter, the position of the boundary anywhere along the river could be defined by measurement from the banks; and that it may be preferable to the ordinary thalweg principle in parts of the river where the thalweg is difficult to determine.

The principal disadvantage of the system is that, being an arbitrary and notional line, it takes no account of natural features - sandbanks, islands etc. in the boundary rivers. Also, the line is to be drawn relative to the "banks" of the river. This and other elements of the system would have to be clarified considerably.

In addition, it is apparent that the suitability of the line depends to a considerable extent on the way in which the "ratio" is determined and, in particular, the determination of the thalweg and the "mouth of the river".

2. Thalweg.

The draft Treaty makes use of the thalweg of the river to determine the point at which the frontier begins at its seaward end and hence to determine the position of the proportional line relative to the banks of the river throughout its course. The location of the thalweg is, therefore, the key to the system proposed in the draft Treaty, and yet the draft Treaty is silent as to where the thalweg is to be located. In the Netherlands Embassy's Aide Memoire accompanying the draft Treaty, the thalweg is said to be "the line joining the deepest points in the Western Channel" of the Corentyne. Now, the thalweg, as it is ^{more} generally understood in international practice, is the deepest navigable channel which permits free and safe navigation. A boundary based on a thalweg should ensure that the channel in fact used for navigation is not wholly within the territory of either of the riparian states. In the case of the Corentyne river, it is the eastern channel which is normally used by shipping and which in fact has greater average depth, throughout its length, than the western channel. The western channel, on the other hand, is tortuous and set about with shoals.

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A treaty making use of the concept of the thalweg should state in express terms where the thalweg of the river is located and, in the case of the Corentyne river, should recognise the centre of the eastern channel as the thalweg.

3. The Mouth of the River.

This line, according to the draft Treaty, is to be used in determining the relative position of the thalweg to the banks of the river and hence determines the location of the "proportional line".

There is no reason why the 100° East line should be considered to be the mouth of the river. Indeed, this line only just touches the Surinam coastline. The point on the left bank where the river is deemed to end is taken from the previous draft Treaty. It would seem reasonable that the point on the Surinam bank where the river is to end should be determined in a similar way using, for example, clearly defined markers on the Surinam bank.

If the thalweg were adopted as the boundary throughout the navigable part of the river, it might not be necessary to provide for a notional "mouth of the river" (provided that the boundary in territorial waters could also follow the thalweg).

4. The shore-line.

Article 1(3) of the draft Treaty uses the "shore-line" in determining the mouth of the Corentyne. The previous draft, Article I(2), used the same word. Its meaning should, however, be made clear, particularly as, under the scheme proposed in the new draft, so much would depend on its precise meaning. It might be as well to make use of the formula contained in the Geneva Convention on the Territorial Sea and to refer to specific charts.

5. Division of Territorial Waters.

It is not clear from the draft Treaty whether Article 4 is intended to dispose of the question of the boundary in the territorial sea. Article VII of the previous draft contained provisions on this matter. If, however, the boundary were to be moved away from the left bank of the river, these provisions and the 010°E. line in general would lose their validity. The 010°E. line emerged in the course of the diplomatic correspondence which led up to the draft Treaty which was ready for signature in 1939. It was intended to be a line continuing the general direction of

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the left bank of the river, but avoiding the main navigation channel.

There would seem to be a choice, so far as the division of territorial waters is concerned, between continuing the thalweg as far as the three-mile limit or drawing a median line, as provided for in Article 12 of the Geneva Convention on the Territorial Sea.

6. Division of the Continental Shelf and Contiguous Zones.

Once again Article 4 of the draft Treaty does not make it clear how the Continental Shelf and Contiguous Zones are to be divided. There would seem to be no reason why the median line should not be adopted here as the dividing line.

7. Islands.

The draft Treaty provides that islands in the boundary rivers shall be Surinam territory. Sovereignty over the islands in the river should be determined by reference to the position of each island in relation to the boundary. Where the boundary passes through an island, it will be necessary to agree on a method of determining sovereignty over that island.

8. Charts.

There would be considerable advantage in agreeing during the course of negotiations on a chart, or charts, which would be treated as having validity for the purpose of the Treaty. Such chart, or charts, could in fact be annexed to the Treaty and referred to in it.

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9. Arbitration

The United Kingdom has not ratified the 1907 Hague Convention on the Pacific Settlement of Disputes. The reason for this is that it is considered that legislation is required to give effect to certain of its provisions, particularly those concerning the attendance of witnesses and the production of documents (Article 23 and 76) and providing privileges for members of the arbitration tribunals (Article 46). The Convention, however, provides an improved procedure as compared with the 1899 Convention and the United Kingdom has taken part in arbitrations under it. The 1907 Convention might therefore be used in the present context on the understanding that the United Kingdom would not be able to give effect to those provisions which require legislation.

Of the two modifications to 1907 Convention procedure suggested in the new draft Treaty, it is not easy to see what advantage there is in having the Secretary-General of the Permanent Court of Arbitration choose two arbitrators and, if he were of the nationality of one of the parties, such a provision would be difficult to accept. The other modification, as to the settling of the compromis, if it means that a dispute could be put before the tribunal in a unilateral petition, does not seem satisfactory. If it means that a petition merely sets in motion the 1907 Convention procedure, with cases from both parties, this may be an improvement.

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